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March 16, 2005

Honorable Gregory M. Sleet
J. Caleb Boggs Federal Building
844 N. King Street
Room 4324
Lockbox 19
Wilmington, DE 19801

Re: EEOC v. Kmart Corporation
Civil Action No. 04-1315 (GMS)

Dear Judge Sleet :

We represent the Defendant Kmart Corporation ("Kmart") in the above-referenced matter. We write in regard to the Motion to Dismiss the Complaint of Plaintiff Equal Employment Opportunity Commission ("EEOC") For Failure To State A Timely Charge, pursuant to Rule 12(c) of the Federal Rules of Civil Procedure, that Kmart filed on March 2, 2005. As you may recall, at our Court conference on March 4, 2005, EEOC produced a Charge Information Questionnaire stamped June 3, 2002, which, upon examination, is sufficient under applicable law to be deemed a timely charge. Accordingly, we respectfully withdraw our Motion to Dismiss the Complaint of Plaintiff Equal Employment Opportunity Commission.

We would also like to update you on new developments as to the bankruptcy aspect of the case. At the 16.2(b) conference on March 4th, we indicated that Kmart's bankruptcy would not necessarily interfere with this federal court case based on our knowledge of the facts at that time. However, after much research, both parties are now of the opinion that there are factual issues that effect Plaintiff EEOC's ability to proceed with this case. Hopefully, this issue will be resolved within the week and we will update the Court again at that time.

We appreciate your attention to this matter.

Respectfully,

s/ Dona S. Kahn
Dona S. Kahn

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DSK

cc: Woody Anglade, Esq.
Patricia C. Hannigan, Esq.